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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,190	07/15/2003	Gustaaf Persoons	FMCNV121470	2343

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EXAMINER

THAKUR, VIREN A

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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08/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/621,190

Applicant(s)

PERSOONS, GUSTAAF

Examiner

Viren Thakur

Art Unit

1761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 07 August 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 13-16, 19-24, 27 and 28.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 5. Applicant's reply has overcome the following rejection(s): The amendment to the claims has overcome the rejection of claims 1, 13-16, 19-24 and 27-28 under 35 U.S.C. 112, second paragraph..

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments with respect to Taylor have been fully considered but are not persuasive. Wong is relied on as evidence of the broad spectrum activity of nisin. That is, nisin inhibited various species and strains in the genera Staphylococcus, Streptococcus, Neisseria, Bacillus, Clostridium and Corynebacterium. This provides the evidence of the properties of nisin which would make it capable of inhibiting bacteria other than only C.Botulinum. Taylor also provides evidence that nisin has the ability to inhibit different botulinum spores from different culture and type sources (Column 1, Line 63 to Column 2, Line 9). Therefore, nisin would inherently have inhibited a broad range of bacteria thus providing increased shelf life of the product. The Office has provided the evidence that nisin would inhibit against a broad range of bacteria, as evidenced by Wong. The rejection under 35 U.S.C. 102(b) as being anticipated by Taylor (US 4597972) and the arguments are taken as cited in the final rejection.

Applicants' arguments with respect to Walker et al. have been fully considered but are not deemed persuasive. As stated in the final rejection, simply because the solution in which the shellfish meat of Walker et al. is placed has a pH of between about 3 and 5 would not lower the pH of the food to 5 or below. The cited evidence to the US Food and Drug Administration, Approximate pH of Foods and Food products recites the pH of crabmeat at between 6.5 and 7. Therefore, it would have been known to the skilled artisan that a 3 percent solution of an acid having a pH of 5, for example, would not lower the pH of the meat to below 5. Claim 1 of Walker et al. disclose wherein the aqueous solution within which the shellfish meat is placed has a pH of less than about 5. This is the pH of the aqueous solution and not the pH of the food product. The rejection and arguments are taken as cited in the final rejection.



KEITH HENDRICKS
PRIMARY EXAMINER